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Mexican Road Commission (1825-1827)

George and Mary Easton Sibley Papers

1-1-1833

Letter from George Sibley, Benjamin Reeves, & Thomas Mather to Peter Hagner, January 1, 1833

George Champlin Sibley

Benjamin Reeves

Thomas Mather

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An act to authorize The President of the United States to cause a Road to be marked out from the Western frontier of Missouri, the confines of New Mexico

Section 1.

Be it enacted by the Senate and House of Representatives of the United States of America in congress assembled. That the President of the United States of America be, and he hereby is authorized to appoint commissioners to mark out a road from the western frontier of the state of Missouri to the boundary line of the United States in the direction of Santa Fe, new Mexico – Provided that the said commissioners shall first obtain the consent of the intervening tribes of Indians, by treaty, to the marking of the said road and to the unmolested use thereof to the citizens of the United states, and of the Mexican Republic.

Section 2.

And be if further enacted, that the President of the United States be and he is hereby authorized to cause the marking of said road to be continued from the boundary line of the United States to the frontier of New Mexico, under such regulations as may be agreed upon for that purpose between the executive of the United States and the Mexican government.

Section 3.

And be if further enacted that the sum of ten thousand dollars be, and the same hereby is appropriated to defray the expenses of marking the said road and the further sum of twenty thousand dollars, to defray the expenses of treating with the Indians for their consent to the

“You will be careful in keeping separate the disbursement under the two divisions of duties which are assigned to you, and your returns will be accompanied by your certification of honor that the sums which you may have disposed of as stated in your accounts, and that the line which you may charge for yourselves and secretary, is that in which you were actually engaged in carrying into effect the objects connected with this branch of your commission. Xxxx

“The sum of \$10,000 is appropriated to defray the expenses of surveying and marking out the road, your disbursements under this head of appropriation, will embrace your own pay as commissioners, which is fixed for this branch of your service at Five dollars each per day, whilst actually engaged in surveying and marking the road, xxxxxxxx “your compensation as commissioners will be, as you are informed \$3 each and \$5 per day for your secretary whilst actually engaged in treating with the Indians and \$5 per day for each commissioner, whilst actually engaged in surveying and marking of the road. It is in the meaning of these instructions to allow you to \$8 a day whilst actually engaged in the twofold duties assigned to you and \$5 a day for a secretary whilst engaged in treating with the Indians. There is no compensation for a secretary provided for in the estimate upon which the appropriation is made, for surveying and marking the road.”

(signed) James Barbour

The foregoing extracts contain all the instructions the the commissioners ever received in relation to their compensation in marking up their accounts, they charge for their own services eight dollars each per day, for every day that they were actually engaged in the duties assigned them. Mr Hagner, the 3rd auditor of the treasury department to whom the accounts have been

presented for settlement questions the property of this charge, alledging that agreeable to the true construction of the instructions to the commissioners they were only entitled to \$8 a day when engaged treating with Indians and that the rest of the time charged, they should have charged only \$5 a day each Mr Hagner 's argument on this point is as follows; after citing part of the instructions. "from the tenor of the instructions (the Commisioners having charged their per diem for the whole period at the rate eight dollars) the question arose whether for the time they were engaged in treating with the Indians it was not intended that their compensation should be equal to what it has been customary to allow to commissioners appointed to make treaties with the savage tribes and whether after having accomplished this part of the duty assigned to them, it was not the meaning of the instructions, that for the time they were exclusively engaged on duty in relation to the survey & marking the road their compensation would be at the rate fixed by the instructions for that permit \$5 per day. Because if the compensation of \$8 was intended to be allowed for the whole period of their service, and not to be confined to the time they were actually engaged in the two fold duties assigned them, it was not perceived why any other rate of allowance should have been named in the instructions. It was not supposed that the commissioners could actually be engaged on both duties at the same time, the treating with the Indians for their consent, being the preliminary step to the commencement of the survey. But being appointed to survey and mark out the road at a fixed per diem of \$5 and the duties of treating with the Indian tribes, being also confided to them, it was presumed whilst acting in the two-fold capacity, the higher allowance was intended for that period only in which they might actually be engaged in negotiating with the Indians." Before I proceed to meet this "question" and reply to the above "remarks" of the 3rd

auditor. It is proper to state that the instructions from the secretary of war to the commissioners were communicated in two distinct letters, both bearing date the 16th of March 1825 and are evidently intended to convey as distinctly as could the views of the department as to the disbursement and accounts to be kept thereof the \$30,000 appropriated by the act of congress for the object of causing a “road to be marked out”. This appropriation having been made under two distinct heads, it became necessary to cause its disbursement under the direction of two distinct bureaus of the war department, hence the two letters of instruction, and hence the seeming inconsistency of the various rates of compensation to the commissioners named in those letters, which is entirely removed however upon an attentive examination of the subject and of the instructions as I shall show. The commissioner after carefully considering the instructions given them as to what was to be their compensation for their own services, and after having consulted others as to the just and proper construction of their instructions on that point and upon being made acquainted with the uniform practice of the government in such cases; came to the conclusion was that their pay was intended to be fixed at eight dollars a day each for every day they might be respectively employed in the duties of their commission, and they made no doubt at all but the true object of their secretary’s \$3 per day or 3/8 of that compensation to be charged to the Indian treaties and 5/8 to the road. Which I am warranted in saying, is the view entertained on this point by both the chiefs of both the bureaus, charged with the execution of the Act of Congress. A reference to the instructions bearing in mind the fact of their being given in two distinct letters as above explained; must convince everyone who will understand the whole matter, that Mr. Hagner is mistaken in his argument – it will be seen. That the rate of \$3 a day for each commissioner whilst actually

engaged in holding the treaties is as positively (???) in the instructions as is the rate of “\$5 a day whilst actually engaged in survey and marking the road” – Mr. Hagner admits however that \$3 per day was not intended to be the pay for negotiating treaties, and setting aside the instructions in this particular, he resorts to usage for authority to allow \$8 a day for marking the treaties – the instructions he says allow \$8 a day, only when the commissioners are actually engaged in their two-fold duties; that is the say, when they are making treaties and marking out the road at the same time. But he admits that “It was not supposed to be that the commissioners could be actually engaged on both duties and the same time”. And yet he consents to allow them each \$8 each a day whilst actually engaged in holding the treaties as the letter of instructions (as herein quoted) says, “your compensation as commissioned in this branch of your service will be \$3 per day” – Mar Hagner expresses a difficulty to comprehend, why if the secretary intended \$8 a day to the actual pay commission for the whole period of their services any other rate of allowance should be named in the instructions – the commissioners contend that the last paragraph (but one) of the letter of instruction no 2, does fix their compensation at \$8 each per day for the whole period of their service – that it was evidently intended with the view of removing the ambiguity and inconsistency apparent, in the preceding parts of the two letters where compensation is mentioned and they conceive that the difficulty of Mr Hagner is entirely removed by what has been already said in relation to the other rates of compensation named in the instructions.

I will proceed however to examine the “question” still more minutely: and in order to do so properly and to remove every doubt; it is necessary not only to refer to the two letters of

instruction but to understand and consider the great responsibility, as well as the arduous nature of the duties enjoined by them.

By the letter, the commissioners are instructed that the first duty enjoined on them by the Act of Congress – this says the secretary, is the first of “two preliminary steps required to be taken, before the commissioners can proceed definitively, to mark the road.” How is it most evident from the very nature of the case, that the (government) must have considered it indispensable for the commissioners in order to discharge their first preliminary duty “to assemble the tribes, with a view to get their consent” and for this purpose a separate and distinct expedition into the Indian country, would of course be necessary. It could not have been deemed proper by the Government for the commissioners to enter at all, upon the main object of their appointment (surveying and marking out the road), before they had taken “first preliminary step” pointed out by their instructions. It was in exact conformity with this plain view of the subject, that the commissioners commenced their operations, and that they had actually made the necessary preparations, in great part for the “first preliminary expedition, when by a fortunate accident, they were able to adopt a different and much less expensive plan, which is fully explained in their general report. When the commissioners were about to proceed as at first proposed (to complete all their Indian treaties, as the “first step”) it never entered into their thoughts that for the responsible and arduous duties they were about to perform, their compensation was only to be three dollars per day, whilst their secretary was to receive from them, by direction of the Secretary of War, Five Dollars a day – they knew perfectly well, that it was the uniform practice of the government to pay their commissioners for such services, at least Eight Dollars per day, and they were also aware of the fact, that at the very

time they were about to leave their and families to encounter the privations of the wilderness in the worst season, to negotiate treaties with the several Indian tribes at different places, general Clark was then actually officiating as a commissioner at his own residence in St. Louis to treat with part of the Chiefs of the same tribes; and was receiving Eight Dollars a day for his services in that capacity in addition to his salary as superintendent of Indian affairs – with the knowledge of these facts, how was it possible for the commissioners to entertain a shadow of doubt that it was in the meaning of all. Secretary Barbour’s instructions to allow them at least \$8 a day ~~to each commissioner whilst engaged in~~ for their services? If they had so doubted nothing is more certain, than that they would promptly declined the service – but it may be asked why discuss this point any further since Mr. Hagner has given it up, and has agreed that the secretary did intend to allow \$8 a day to each commissioner, whilst actually engaged in holding treaties. Mr Hagner has indeed admitted that for the separate service of negotiating the treaties the commissioners are entitled to their pay as claimed; and this he admits in the face of what has been by him contended to be the true meaning of the instructions on this point, to it that such single service \$3 per day was the intended allowance. Now I beg leave to assume if the secretary really intended to allow \$8 a day for this single service, why did he expressly say in his letter No 1 that \$3 per day was to be the allowance? Why mention that sum at all? The plain answer is as before stated: that he desired three eighths of the commissioner pay to be charged in the accounts of the disbursements, to the Indian treaty head, and the other five eighths to the head of marking out the road for that he should have intended to fix the actual pay of the commissioner at three dollars a day whilst making treaties, is too palpably absurd to be for one moment admitted. But when in his letter No 1 he says “Which

compensations” (meaning the \$3 to the commissioners, \$5 to their secretary) “together with all necessary expenses will constitute an item in the disbursements of the twenty thousand dollars” (The sum appropriated for treaties) and to be deducted from that sum as if it not perfectly clear what was his meaning and intention?

If therefore as has been shown (and admitted) the commissioners are entitled to claim \$8 a day for negotiating the treaties, notwithstanding their allowance for that separate service appears at first view to be fixed at \$3 per day surely it cannot be deemed unreasonable for them to demand at least the same rate of pay for marking out the road altho \$5 a day is named in the instructions as the sum of fixed for that separate service – If as has been admitted, it would be unjust to disallow their charge, as to the time employed negotiating the treaties, it cannot be left so, for that, with which infinitely greater labor, exposure and privatization, they employed in the other, and principle branch of their commission – the usage for allowing Eight dollars a day for services such as those last names, is believed to be quite as well established, and quite as justly, as that which has been admitted to have been applicable to those performed in holding Indian treaties. With the view of escaping the group inconsistency and injustice, of requiring the services of the commissioners for two dollars a day less than their secretary, and \$5 a day less than other commissioners are uniformly allowed and paid for similar (tho far less arduous) services: it has been urged, that in the present case, the commissioners might be allowed their pay as charged, provided they were actually employed, at one and the same time in both branches of their two-fold duties – But unfortunately, this was utterly impossible; and if it were not impossible, was it not inadmissible under the law of their instructions. Under no circumstances whatever, could the commissioners have performed

their two-fold duties at one and the same time. When they were “actually engaged in holding treaties” how could they at the same time be actually engaged in surveying and marking out the road? But they might be as in fact they were during the time charged, wholly devoted to either, or to both branches of their trust, as circumstances required; and in that manner were they “actually engaged in the two-fold duties assigned to them”, and in no other – and in no other way could it have been effected of them, or was it possible for them to have been so engaged “in the meaning” of Mr. Secretary Barbour’s two letters of instructions – the commissioners must therefore insist, as before declared, that the concluding paragraphs of the letter of instruction No 2 were intended expressly to fix the compensation of the commissioners, and that it is there fixed as eight dollars each per day “whilst engaged in the two fold duties assigned to them”, that is to say for the whole period that they actually employed, respectively in carrying into effect the Act of Congress under which they were appointed. It is contended that no other rate of daily named in either of the two letters of instructions could in the nature of the case have any other relation to the actual compensation of the commissioners. Than to prescribe a rate by which its amount should be divided properly between the two branches of the appropriation which they were directed to disburse separately and distinctly and account for to two appropriate Bureaus of War Department. If the commissioners had been aware that it was intended to reduce their (customary) daily pay at any period of their employment, more especially at the precise period when their duties were to be most toilsome and hazardous; they could most assuredly, have accepted a service so unusually marked and so manifestly unjust, not to say illiberal, in its offer of compensation.

In conclusion they solemnly agree, that they agreed upon the duties of their appointment, under the entire belief and expectation, that their time and services were to be renumerated at the rate of pay that they have been charged, and they never for one moment though otherwise; or did they ever imagine, that their just and reasonable claim could be refused or questioned, until "the question arose" in the 3rd auditors office which I have examined and, as I trust, fully answered.

Lindenwood, St Charles, Missouri

Signed, 1833

G.C. Sibley for self

B. H. Reeves and

Tho Mather

Late Commissioner